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TRADE AND DEVELOPMENT BOARD
Committee on Shipping
Working Group on International
Shipping Legislation
Twelfth session
Geneva, 22 October 1990
Item 6 of the provisional agenda

DRAFT REPORT OF THE WORKING GROUP ON INTERNATIONAL SHIPPING LEGISLATION ON ITS TWELFTH SESSION

Held at the Palais des Nations, Geneva,
from 22 to .. October 1990

Rapporteur: Mr. M. Gauthier (Canada)

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INTRODUCTION

1. The twelfth session of the Working Group on International Shipping Legislation, convened pursuant to Committee on Shipping resolution 61 (XIII), was held at the Palais des Nations, Geneva, from 22 to .. October 1990. In the course of the session, the Working Group held .. plenary meetings.

Chapter I

CHARTER PARTIES

(agenda item 3)

2. For its consideration of this item, the Working Group had before it the following documentation:

"Charter parties: a comparative analysis - report by the UNCTAD secretariat" (TD/B/C.4/ISL/59).

3. The Director of the Shipping Division recalled that the Working Group had begun consideration of the subject of Charter Parties at its fourth session in 1975 but that its further examination had had to be postponed until after the completion of work on marine insurance and on maritime liens and mortgages.

4. With regard to the secretariat's report (TD/B/C.4/ISL/55) the comparative analysis of different clauses in various charter party forms clearly demonstrated that a number of important standard form charter party clauses were ambiguous, uncertain in their operation and, when subjected to the scrutiny of courts, variously interpreted and prone to divergent constructions by different national régimes. To illustrate the situation, the report had used many British and United States court decisions and some New York Arbitration awards, but very few London Arbitration awards had been referred to because London Arbitration awards were not published.

5. There had been repeated calls for modernization and improvement of charter parties which dated back to the beginning of the century and which were still being used without adaptation to the requirements of modern commercial life.

6. In that connection, and further to the recommendations in the secretariat's report, the Working Group might wish to give consideration to redrafting and updating charter party core clauses and to drafting agreed definitions of charter party terms in order to assist in reducing disputes and to promote uniformity of interpretation of charter party clauses. In this context, valuable work had been carried out at the initiative of the CMI, as a result of which the so-called "Charter Party Laytime Definitions 1980" had been jointly issued by the CMI, BIMCO, GCBS and FONASBA. Unfortunately they had not been sufficiently promoted, for example by incorporation into the standard charter party forms, and consequently they were not frequently used. The fact that a considerable number of voyages were performed without any problem did not undermine the need for improvement and greater clarity and

uniformity. That was also true in relation to other components of international trade to assist the parties in clearly identifying their rights and obligations and to protect themselves.

7. Particular problems arose where a bill of lading issued under a charter party was governed by the Hague or Hague-Visby Rules while the underlying charter party was not. Where contractual responsibilities for loss of or damage to cargo under a charter party differed from the Hague and Hague-Visby Rules, shipowners' liabilities could change during the voyage depending upon whether or not the bill of lading issued pursuant to the charter party had been negotiated to a third party. Modern charter parties tried to avoid this inconsistency by incorporating the Hague/Hague-Visby Rules, through a paramount clause, and the report illustrated that uncertainties and disputes quite often arose out of such an approach. It was therefore proposed in the report that the Working Group consider drafting a set of rules based on the Hague and Hague-Visby Rules especially designed for charter parties.

8. With regard to the argument that charter parties were private contracts between shipowners and charterers without any impact on third parties and requiring no mandatory regulation, it should be stressed that, as the report showed, third party bill of lading holders could be bound by the terms of a charter party they had never seen. Moreover, mandatory legislation would still leave parties free to negotiate the special terms they required for their particular charter party.

9. The spokesman for the Group of 77 (Ghana) said that the question of charter parties was particularly important for developing countries, as they were increasingly entering the tanker and dry bulk trades, which required a good understanding of the chartering process. Also, as developing countries increasingly acquired their own tonnage, it was imperative that they base their chartering trade upon a firm and rational foundation, with modern charter party forms drafted with developing countries in mind.

10. The secretariat's report clearly demonstrated that the current system of chartering was unsatisfactory from both a legal and a practical point of view. Many clauses of standard charter party forms commonly in use were unclear and contained antiquated wording. A number of widely used standard charter parties were not sufficiently comprehensive, requiring a large number of additional clauses which were in themselves considered a source of disputes and litigations because of frequent contradictions between printed and additional clauses and indeed between additional clauses themselves.

11. The modifications and improvements carried out by international and commercial organizations during the past decade did not appear to be sufficient. Very old and outdated charter parties continued to be used and continued to give rise to a large number of disputes. Furthermore, since standard charter party forms were mainly drafted by shipowning interests, they were often heavily weighted in the shipowners' favour. It was therefore essential that any substantive reforms be conducted under the auspices of UNCTAD, taking into account the interests of both developed and developing countries as well as charterers, cargo interests and shipowners.

12. International action in the field of charter parties was long overdue, and the Group of 77 therefore fully endorsed the recommendations made by the secretariat in its report. It particularly supported international legislative action. Failure to improve the situation with regard to charter parties would detract from the effectiveness of international regulation of bills of lading. Many of the factors justifying the mandatory application of international rules to bills of lading also applied to charter parties, in particular concerning greater uniformity, certainty and clarity.

13. Lack of certainty and predictability was detrimental to all interested parties, but the developing countries always found that they suffered disproportionately to the developed countries. Moreover, by virtue of the existence of an internationally acceptable mandatory régime in respect of bills of lading but not in respect of charter parties, there were differences in the obligations of the carrier for the execution of the contract of carriage without unreasonable delay or deviation, for the provision of a seaworthy vessel and for care and custody of the cargo. It was quite ironic that such fundamental issues should be those upon which bills of lading and charter parties should vary.

14. Where no internationally accepted régime applied to charter parties, shipowners could exclude liability for loss or damage to cargo caused by their negligence. There was, therefore, a need to protect owners of cargo shipped on tramp vessels by mandatory regulations to the same extent that owners under bills of lading in the liner trade were protected. Furthermore, the secretariat's report had shown that third parties would also be affected by the terms of charter parties. Depending on the terms of incorporation clauses in bills of lading, parts or even all terms and conditions and clauses of a charter party could be imposed upon a third party bill of lading holder who had no knowledge of the charter party.

15. He emphasized that, in addition to drafting and updating core clauses of standard charter party forms, consideration had to be given to drafting a set of definitions of terms used in charter parties.

16. Finally, the Group of 77 strongly recommended that the work on charter parties be extended in order to include bareboat charter parties. The subject was of considerable importance to developing countries, since long-term charters on demise or bareboat terms were increasingly being used in ship financing and could seriously impinge upon the economic aspirations of developing countries purchasing tonnage. Also in the context of bareboat charter registry, the demise or bareboat charter had serious implications in the spheres of both private and public international law.

17. The spokesman for Group B (Netherlands) said that the secretariat's report provided a broad and balanced analysis of certain clauses of time and voyage charter parties. However, irrespective of the problems mentioned in the report, commercial parties engaged in chartering activities generally felt quite comfortable when working with charter parties. While the process of chartering was not completely problem-free, disputes on matters of fact and interpretation of clauses could not be avoided. Furthermore, attention was drawn to the new and revised charter party forms introduced into the market in recent decades which reflected changing market conditions. Of course, Group B countries were willing to examine and, if possible, ameliorate any particular circumstances related to chartering which gave rise to difficulties and adversely affected the economic interests of developing countries.

18. Referring to the positions taken by the different regional groups at the Working Group's fourth session in 1975, he said that no attempt had been made in document TD/B/C.4/ISL/55 to assess the economic consequences of chartering for developing countries, and he therefore assumed that UNCTAD's 1974 findings (TD/B/C.4/ISL.13, para. 16) were still valid, namely that an assessment of the economic consequences of the present system, in the sense of calculating what could be saved if the cost of existing arrangements were revised, proved to be impossible. He invited the Group of 77 to inform the Working Group about any eventual adverse implications for their economies which they had detected.

19. With regard to the recommendations and conclusions of the report, the so-called "core" clauses in charter parties had to a large extent already been harmonized and standardized, though it had to be realized that it was not always possible to achieve an ideal solution. Clauses constituting any

particular form of charter party had to be considered to be an integral part of the whole document and could not always be taken out of context and be replaced by other similar clauses without disturbing the balance of the negotiated document. Clauses used in a charter party for a particular trade in one part of the world could not necessarily be applied to a charter party covering a completely different trade in another part of the world. In addition, charter party conditions had to a certain extent to reflect the terms agreed between the seller and the buyer of the goods carried, and agreeing on standard charter parties was a purely commercial matter which could only be of any practical significance if the charter party had been agreed individually for a particular trade.

20. With regard to international legislation, Group B strongly believed that the application of mandatory legislation to charter parties would hamper or eliminate the flexibility inherent in the present system, by which the parties were allowed complete freedom of contract. This freedom was vital in order to maintain full flexibility in negotiations and to achieve cost efficiency for the parties involved, and the question of mandatory international law had not established a need for such regulation, nor had it demonstrated that such regulation was desirable or workable.

21. Nevertheless, unified definitions for the multitude of chartering terms were - at least theoretically - desirable to remove some of the uncertainties existing, including problems arising from different interpretations in different countries and under different court systems. Referring to experience with the 1980 Charter Party Laytime Definitions, he expressed serious doubts as to their practical use and as to whether a more elaborate set of definitions would be of any benefit for the industry.

22. Finally, with regard to the organization of work of the Working Group, the proposal to establish a subgroup of experts (TD/B/C.4/ISL/54, para. 4) was unacceptable to his Group, at least at such an early stage. In the view of Group B, the acceptance of such a proposal would prejudge the outcome of the Working Group's deliberations on the contents and findings of the secretariat's report. If at all established, such a subgroup of experts would require a clearly defined mandate which could only be provided after an in-depth discussion of the findings and conclusions drawn in the report. Group B therefore suggested that the Working Group revert to the question of setting-up a subgroup of experts, if at all necessary, at the end of an in-depth discussion on document TD/B/C.4/ISL/55.

23. The spokesman for Group D (Union of Soviet Socialist Republics) underlined the importance of the subject of charter parties and the necessity of finding a mutually acceptable solution to existing problems.

24. He reminded the Working Group that the decision to consider the subject of charter parties had already been taken by the Working Group at its fourth session in 1975. The years that had elapsed since then had shown that it was not enough to discuss and adopt new international instruments. It was essential that such instruments obtain general support.

25. He hoped that, upon completion of the work before the Working Group, clear guidelines for further action would be established, and the countries of Group D were prepared to co-operate actively in order to achieve this aim.

26. The representative of China said that the secretariat's report constituted a comprehensive and in-depth analysis, and work on charter parties, which had begun 15 years previously at the Working Group's fourth session, was of practical significance for all parties involved in chartering.

27. His country was a developing country, and from the point of view of both its charterers and shipowners, the existing system in chartering left much room for improvement. Accordingly, standardization and rationalization of charter party clauses on the one hand and the definition of terms used in charter parties on the other would help to clarify rights and responsibilities, demarcate risk in a rational manner and reduce the number of disputes. Standardization of charter clauses and clarification of terms should therefore be the subject of substantive consideration by the Working Group.

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Chapter I

CHARTER PARTIES

(agenda item 3)

(continued)

28. The representative of Mexico, referring to the importance of the subject of charter parties, stressed the serious economic implications charter parties had for his country. In that connection, a pamphlet had recently been published by an institution in his country that highlighted the various problems concerning the meaning of the wording in various clauses used in charter parties such as TEXACOTIME 2, INTERTANKTIME and ASBA VOYAGE II.

29. The secretariat's report (TD/B/C.4/ISL/55) had clearly indicated the problem of interpretation of charter parties and the need for updating and harmonization. Referring to the "both to blame collision" clause, he added that charter party clauses were usually based on Anglo-Saxon law, and it was very difficult to accept and to explain those clauses to practitioners and national courts in Latin countries with a Roman law background.

30. The secretariat's report revealed that some charter party clauses had to be updated because of their deficiencies and lack of clarity. It was therefore clear that: (i) harmonization and improvement of charter party clauses was necessary; (ii) international legislation on charter parties should be adopted on the basis of national models already existing in some countries; (iii) definition of the basic terminology employed in charter parties was essential; (iv) a clear distinction was needed between the various contracts used to operate ships.

31. The representative of Argentina said that the report prepared by the UNCTAD secretariat (TD/B/C.4/ISL/55) constituted a valuable source of reference, and the task now before the Working Group was to move forward in updating and modernizing charter parties. He stressed that improvements to the present legal régime concerning charter parties were necessary and interpretation of the clauses used in charter parties had to be facilitated, particularly since the outdated language used in standard charter party forms was quite often very difficult to understand. His country was heavily involved in overseas trade activities, and problems concerning ship chartering arose constantly. He hoped that the activities of UNCTAD on the subject would

improve the present situation for the benefit of all parties involved and that either an international convention or UNCTAD model rules embodying a modern, practical text would be prepared.

32. With regard to the problem of seaworthiness of vessels, charter parties often did not contain clear stipulations on this particular subject and a reference to the Hague Rules assisted the parties in interpreting the charter terms. In the case of the Gencon form, international conventions such as the Hague or Hague-Visby Rules were directly incorporated into the charter party in order to abolish outdated clauses dealing only with seaworthiness at the commencement of the voyage.

33. The representative of Poland said that the secretariat's report provided a good basis for the work of the Working Group in re-examining, redrafting and eliminating outdated, one-sided or ambiguous standard clauses. Work should proceed on harmonization, standardization and improvement of charter party clauses, as well as on drafting definitions of basic terms and phrases, in order to minimize litigation and to avoid biased wording in standard clauses. Charter parties were mainly drafted in the English language, but in drafting charter parties used in international trade one had to try to avoid making reference to legal concepts based only on common law and should rather refer to transnational terms and concepts familiar to various legal systems. In that connection, he emphasized the importance of wider representation and collaboration of the international shipping and trading community, as well as the developing countries, in the regulation and improvement of charter parties.

34. However, his country was not convinced of the need for international legislative action that would impose mandatory regulations on charter contracts. Given the existence of different rules (the Hague rules, the Hague-Visby rules and soon probably the Hamburg Rules), the question would inevitably arise as to which legal régime the proposed mandatory rules should be based on. It had to be left to parties to agree which rules were applicable to their contracts. He therefore supported the idea of working out model clauses but not any mandatory legislation.

35. In developing its recommendations, the Working Group might wish to take account of NUVOY, a universal voyage charter party worked out by Polish shipping experts in 1964 and revised in 1984, and recommended by BIMCO and the General Council of British Shipping. NUVOY had become increasingly popular and had not been the source of many arbitrations or litigations.

36. The representative of the secretariat of UNCITRAL said that his organization was the core legal body in the United Nations system regarding unification and harmonization of international trade law. The two directions of his organization's mandate were to monitor international developments and co-ordinate the work of United Nations agencies, and to undertake activities by itself when the need was demonstrated. The mandates of UNCITRAL and UNCTAD were complementary. Thus standardization and harmonization of clauses in charter parties could be entrusted to UNCTAD, and the task of considering legislation could be left to UNCITRAL.

37. With regard to the need for legislative action, three questions remained open: (i) was unification of law in the area of charter parties useful; (ii) to what extent should uniform rules, if established, be mandatory or non-mandatory; and (iii) what should be the scope of those uniform rules.

38. Finally, the Working Group might wish to request UNCITRAL to consider further the need for any legislative work, in close co-operation with UNCTAD.

39. The observer for BIMCO said that his organization had helped formulate approximately 60 charter parties and other shipping documents, many of the charter parties being so-called "agreed" charter parties. The drafting and negotiating of agreed charter parties was an ongoing process.

40. The secretariat's report (TD/B/C.4/ISL/55) gave the impression that charter party disputes were inherent to almost each and every fixture. In fact, however, less than 1 per cent of charter parties gave rise to disputes, and the majority of those disputes were disputes of fact and not of interpretation.

41. With regard to standard form contracts, there was a contradiction between paragraph 395 of the secretariat's report, which stated that in many trades in the shipping industry there were no longer standard form contracts, and paragraph 208, which indicated that more than 50 standard voyage charter party forms were used. With reference to paragraph 405 of the report, since the fourth session of the Working Group in 1975, more than 56 charter parties and bills of lading had either been withdrawn as obsolete or had been revised or newly drafted. He therefore concluded that the shipping community was able to react in accordance with the requirements of the market.

42. With respect to the charter parties annexed to the secretariat's report, he said that the choice was disappointing, since some had not been discussed with shipowners at all. Several agreed charter parties existed for the cases

in question which had given rise to few disputes. It was also to be regretted that seawaybills, now used in many trades, were not mentioned in the UNCTAD report. In some trades, for 85 per cent of cargoes carried there was no need for a negotiable bill of lading because the cargo was not being sold during transit.

43. Finally, on the subject of mandatory legislation, he said that bill-of-lading holders were always protected by the Hague or Hague Visby Rules and that shipowners could not contract out of their liability under mandatory rules.

44. The observer for the Institute of Chartered Shipbrokers said that he agreed with the conclusion in paragraph 354 of the report that when considering any standardization, harmonization or improvement of charter terms and any necessity for international legislative action, due account should be taken of the interests of third party bill-of-lading holders, as well as those of charterers and shipowners.

45. With regard to mandatory legislation, the preference of his organization would be for meaningful pre-discussion with the shipping industry directed towards voluntary adoption of a suitable charter party provision dealing with the point, thus achieving the desired result more quickly than legislation would permit and preserving a valued freedom to contract in the freight market.

46. The overall thrust of the secretariat's report was towards discussion with the relevant organizations on points which had regularly given rise to disputes, the overall purpose being to ensure that market fluctuations should not influence the terms and conditions of charter parties but be reflected in the freight rate only. To this end, clarification of ambiguous terms must surely commend itself to all parties. His organization therefore accepted the secretariat's report in toto as a basis for discussion with relevant organizations.

47. With regard to harmonization, he agreed that most of the clauses listed in paragraph 406 of document TD/B/C.4/ISL/55 were indeed capable of harmonization and/or improvement. With regard to arbitration, available figures for 1985 to 1988 indicated that, in spite of some withdrawals and additions of charter party forms for particular commodities, there had been no substantial variations in the number of disputes over charter parties since UNCTAD last considered the subject in 1974. Finally, some uniformity already existed in the component parts of the movement of goods internationally, but

dry cargo voyage charter parties, for which there were still over 50 so-called "standard" forms plus special charterers' forms, presented the major problem in terms of lack of harmony.

48. The observer for the Japan Shipping Exchange, Inc. said that his organization had drawn up approximately 50 well-balanced standard maritime documents, including a number of charter parties in the English language.

49. Shipping was a highly specialized and technical business, and newcomers to the business had to acquire an understanding of the prevailing customs and, with regard to charter parties, study the relevant legal cases. What was needed, therefore, was more study of charter parties, not new rules or terms.

50. With regard to standardization, harmonization and improvement of charter party clauses, such activities must be undertaken by the drafting organizations themselves. As far as his organization was concerned, whenever new business situations arose, the possible need to amend clauses was examined.

51. Concerning disputes over charter parties, his organization had not had many disputes arising over interpretation of clauses. Most disputes related to unilateral failure of charter parties or to questions of fact. Moreover, however standarized or clear the terms used in charter parties were, interpretation would be necessary, inevitably giving rise to differences of opinion or disputes. New terms would only introduce new confusion.

52. Finally, it must be emphasized that mandatory legislation could never be acceptable.

53. The spokesman for Group B (Netherlands) said that from the outset, Group B had not excluded the possibility that examination of the issues raised by both TD/B/C.4/ISL/13 and TD/B/C.4/ISL/55 might reveal problems related to charter parties. The issues raised in the documents were of a general nature and did not reveal problems unique to developing countries. Document TD/B/C.4/ISL/55 concentrated on a number of badly drafted clauses but did not take sufficient account of the fact that there existed corresponding clauses and indeed whole charter parties which were adequately drafted. What Group B had expected to hear was whether there were specific problems faced by the shipping community in developing countries and to what extent charter-party-related issues had specific adverse effects on the economic interests of these countries. It must be borne in mind that developing countries' interests included those of both shipowners and charterers.

54. Although Group B countries had listened very carefully to the views expressed, they had not yet detected any problems experienced by developing countries that specifically adversely affected their economic interests and thus merited further consideration by the Working Group.

55. If the Working Group was to pursue the topic of charter parties, it must do so on the basis of clearly identified problems affecting in particular the economic interests of developing countries. Only following detailed consideration of such clearly identified issues would the Working Group be in a position to decide whether any follow-up, touching on purely commercial matters, might be necessary.

56. The spokesman for the Group of 77 (Ghana) said that, with regard to the statement of Group B, the assessment of the economic consequences of chartering for developing countries would require statistics and data which were necessarily of a confidential nature, but a number of general issues could be raised. Firstly, the cost of litigation over the antiquated terms used in charter parties was prohibitive for developing countries, particularly in cases involving clauses with economic implications, and the number of arbitrations during the past 16 years had not decreased. If there had been so much improvement and revision during those years, as claimed by Group B and BIMCO, why were the supposed beneficial effects not obvious? Secondly, charter party forms and clauses were drafted in the English language and based on Anglo-Saxon law, subject to principles hard to understand and apply in relation to Roman law concepts. Thirdly, developing country shipowners, not aware of the implications of some of the so-called "modern" charter parties such as Asbatime, would be subjected to a strict liability régime not even covered by the P & I Clubs, since their rules only applied up to the limit of the Hague and Hague-Visby Rules. Fourthly, uncertainties existed in relation to responsibility for cargo claims under charter parties and bills of lading issued under them. In that connection, consultations with commercial parties in developing countries had revealed that those parties did not feel as safe and comfortable as commercial circles consulted in Group B countries.

57. With respect to Group B's observations on standardization, harmonization or improvement of core clauses of charter parties, the Group of 77 agreed that clauses should not be taken out of context. Indeed, some charter party disputes were due to widespread use of old and insufficiently comprehensive charter party forms, and the parties were forced to resort to patchwork

addition of clauses from totally different standard forms without any adaptation. However, there was no intention of imposing any standard charter party form or clause upon commercial parties, but that did not mean that charter party clauses could not be improved and updated in order to clarify the obligations undertaken and to reduce disputes. Alternative provisions could be drafted so that the parties to a charter could more easily assess the value of each alternative division of risk or expense in terms of freight or hire.

58. Concerning the necessity for international legislative action, the Group of 77 did not believe that the application of mandatory rules to charter parties would eliminate the flexibility inherent in the present system. If only the limited area of cargo responsibility was covered, in line with the Hague and Hague-Visby Rules, parties would still be left free to negotiate the terms they required for their particular charter party.

59. As regards definitions of basic terms, such definitions would not be of only limited practical use. The 1980 Charter Party Laytime Definitions had not been sufficiently promoted or incorporated into standard party forms. The inclusion of the definitions in the printed forms would not prevent parties deleting them if they so wished.

60. With regard to the statement of BIMCO, a number of agreed charter parties may well have been revised or withdrawn, but agreed charter parties were not the main cause of the problem. Nothing was being done in relation to old and outdated charter parties such as Gencon and Baltime, which were still widely used and continued to be a source of litigation. The Gencon charter party, for example, with its many deleted printed clauses and large number of additional clauses, could hardly be regarded as a standard charter party form suitable for modern maritime transport. There was therefore no inconsistency between the statements in paragraphs 208 and 395 of the secretariat's report. In addition, while many charter parties had been improved, it was essential for any future improvement to be carried out in a representative intergovernmental organization such as UNCTAD.

61. BIMCO had further stated that the greatest number of charter party problems arose from disputes on facts and not in interpretation. However, the secretariat's report showed that a large proportion of disputes related to interpretation of the old and obscure charter party wording. Further, though it was true that shipowners could not contract out of liability under bills of

lading subject to mandatory Hague and Hague-Visby Rules, if the charter party contained clauses removing from the shipowner liability for loading, stowing and discharging and if the charter party terms were incorporated into bills of lading, the third party bill-of-lading holder subject to Hague or Hague-Visby Rules might not be able to claim against the shipowner for loss or damage to goods caused during loading, stowing or discharging. That situation would not be nullified by the requirement of Article II, Rule 2 of the Hague Rules, because at least according to English law those words did not define the scope of the contract service but the terms upon which the agreed service was to be performed.

62. Finally, the Group of 77 was pleased to note that the Working Group's mandate, as set out in Committee on Shipping resolution 7 (III), was not in question.

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Addendum

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Chapter I

CHARTER PARTIES

(agenda item 3)

(continued)

63. The spokesman for Group B (Netherlands), referring to the recommendations and conclusions in chapter 6 of the UNCTAD secretariat's report, said that, as far as standardization, harmonization and improvement of charter parties was concerned, Group B could not entirely agree with the statement in paragraph 405 of the report that the international shipping industry did not appear to have developed any sufficiently effective mechanism for discouraging the use of outdated forms nor for encouraging the use of modern, better drafted forms. In fact, private industry had made considerable efforts to change obsolete charter party forms since 1975. Moreover, the impression given in the report that disputes were inherent in many fixtures of charter parties was not correct. Less than 1 per cent of all charter parties resulted in disputes, the number of arbitration cases had not increased since 1974, and a lot of those disputes were on facts and not on interpretation of particular terms. With regard to the charter parties annexed to the secretariat's report a more balanced selection would probably have resulted in a different conclusion. Group B did not agree that charter party clauses differed for mainly historical reasons; account also had to be taken of the commodities involved and regional circumstances.

64. As far as the legislative action recommended by the secretariat was concerned, he stressed that this proposal did not take account of the differences between bill-of-lading contracts and charter parties and could not be supported by Group B. Unlike bill-of-lading contracts, charter parties were freely negotiated by parties with equal bargaining power. Parties to a charter did not seem to need the same protection as bill-of-lading holders, and application of mandatory legislation to charter parties would reduce the flexibility of the chartering system and give rise to additional disputes.

65. As far as the definition of basic terms was concerned, even if such definitions were prepared, there was no guarantee that they would actually be used by the shipping industry. However, Group B was prepared to consider this subject, if the other delegations so wished.

66. The Deputy Director of the Shipping Division informed the Working Group of a letter received from the President of the International Maritime Committee. The latter emphasized that, if the Working Group decided it was necessary to investigate further the need for mandatory legislation in the field of time and voyage charter parties, CMI would be glad to co-operate with the Working Group.

67. At the Working Group's 92nd plenary meeting, on 25 October 1990, the spokesman for the Group of 77 (Ghana) introduced a draft resolution, entitled "Charter parties", on behalf of the States members of the Group of 77 (TD/B/C.4/ISL/L.84).

68. At the Working Group's 93rd plenary meeting, on 25 October 1990, the spokesman for Group B (Netherlands) introduced a draft resolution, entitled "Charter parties", on behalf of the States members of Group B (TD/B/C.4/ISL/L.85).

69. The representative of Argentina said that it was important to take a step forward in improving the charter party system in the interests of all countries of the world. The draft resolution proposed by the Group of 77 represented a good response to the existing state of affairs and would make it possible to study charter parties in appropriate depth. Group B's draft resolution, however, appeared to run the risk of postponing serious consideration of charter parties in UNCTAD for a very long time.

70. The representative of Mexico, expressing strong support for the representative of Argentina, said that the suggestions in Group B's draft resolution concerning education and information did not correspond to the concerns expressed in his delegation's first statement. His country, for example, had a long tradition in maritime law, but what it needed now was harmonization, improvement, international legislation and definitions of terms in the field of charter parties, as well as a clear distinction between the various contracts used to operate ships.

71. The spokesman for Group B (Netherlands) said that the draft resolution submitted by Group B met many of the concerns expressed by the Group of 77. In addition, by addressing itself to commercial parties, it made it possible for work on charter parties to begin without delay.

Chapter II

ORGANIZATIONAL MATTERS

A. Opening of the session

72. The twelfth session of the Working Group on International Shipping Legislation was opened on 22 October 1990 by Mr. Walls (United Kingdom).

B. Election of officers

(agenda item 1)

73. At its 88th (opening) plenary meeting, on 22 October 1990, the Working Group elected its bureau, as follows:

Chairman:	Mr. René Abessolo Eyi	(Cameroon)
Rapporteur:	Mr. Mark Gauthier	(Canada)
Vice-Chairmen:	Mr. Karl-Johan Gombrii	(Norway)
	Mr. George Ivanov	(Union of Soviet Socialist Republics)
	Mr. José Ensebio Salgado	(Mexico)
	Mr. Johan Syahperi	(Indonesia)
	Mr. Zhu Zengjie	(China)

C. Adoption of the agenda and organization of work

(agenda item 2)

74. At its 88th (opening) plenary meeting, on 22 October 1990, the Working Group adopted its provisional agenda (TD/B/C.4/ISL/54), as follows:

1. Election of officers
2. Adoption of the agenda and organization of work
3. Charter parties
4. Provisional agenda and date of the thirteenth session of the Working Group
5. Other business
6. Adoption of the report of the Working Group to the Committee on Shipping

D. Membership and attendance

75. The following States members of UNCTAD members of the Working Group were represented at the session: Algeria; Argentina; Australia; [Bahrain]; [Bangladesh]; Belgium; [Benin]; [Bolivia]; Brazil; [Bulgaria]; [Burkina Faso]; Cameroon; Canada; [Central African Republic]; [Chile]; China; [Colombia]; [Costa Rica]; [Congo]; Côte d'Ivoire; [Cuba]; [Cyprus]; [Czechoslovakia]; Democratic People's Republic of Korea; Denmark; [Dominican Republic]; [Ecuador]; Egypt; [El Salvador]; Ethiopia; Finland; France; [Gabon]; Germany;

Ghana; Greece; [Guatemala]; [Guinea]; [Honduras]; Hungary; India; Indonesia; Iran (Islamic Republic of); [Iraq]; [Israel]; Italy; [Jamaica]; Japan; [Jordan]; Kenya; Kuwait; Lebanon; [Liberia]; Libyan Arab Jamahiriya; Madagascar; [Malaysia]; [Malta]; [Mauritius]; Mexico; Morocco; Netherlands; [New Zealand]; [Nicaragua]; Nigeria; Norway; [Oman]; [Pakistan]; Panama; [Paraguay]; [Peru]; Philippines; Poland; Portugal; Qatar; Republic of Korea; [Romania]; Sao Tome and Principe; Saudi Arabia; Senegal; [Somalia]; Spain; Sri Lanka; Sudan; Sweden; Switzerland; [Syrian Arab Republic]; Thailand; [Trinidad and Tobago]; Tunisia; Turkey; [Uganda]; Union of Soviet Socialist Republics; United Arab Emirates, United Kingdom of Great Britain and Northern Ireland; United Republic of Tanzania; [United States of America]; [Uruguay]; [Venezuela]; [Viet Nam]; [Yemen]; [Yugoslavia]; Zaire.

76. The United Nations Commission on International Trade Law was represented at the session. The International Trade Centre UNCTAD-GATT was also represented at the session.

77. The following international organization was represented at the session: General Agreement on Tariffs and Trade.

78. The following intergovernmental organizations were represented at the session: League of Arab States; Ministerial Conference of West and Central African States on Maritime Transport; Organisation for Economic Co-operation and Development; Organization of African Unity.

79. The following non-governmental organizations were represented at the session: General Category: International Bar Association; International Chamber of Commerce. Special Category: Baltic and International Maritime Council; Council of European and Japanese National Shipowners' Association; Federation of National Associations of Ship Brokers and Agents; International Association of Independent Tanker Owners; International Association of Dry Cargo Shipowners; International Chamber of Shipping.

80. The following non-governmental organizations, specially invited by the UNCTAD secretariat, were represented at the session: Institute of Chartered Shipbrokers; Japan Shipping Exchange, Inc.

E. Provisional agenda and date of the thirteenth session of the Working Group

(agenda item 4)

[To be completed]

F. Other business

(agenda item 5)

[To be completed as appropriate]

G. Adoption of the report of the Working Group to the Committee on Shipping

(agenda item 6)

[To be completed]